



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Stokke v Therrien, 2023 ONLTB 31609

**Date:** 2023-04-20

**File Number:** LTB-L-048408-22

**In the matter of:** 16 SECOND AVENUE WAWA  
ON P0S1K0

**Between:** Derek Stokke Landlord

**And**

Stephan Therrien Tenant

Derek Stokke (the 'Landlord') applied for an order to terminate the tenancy and evict Stephan Therrien (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes. This is the L1 Application,

This application was heard by videoconference on April 6, 2023.

The Landlord, and the Landlord's Legal Representative, Nathan Chevalier, attended the hearing.

As of 10:25 a.m. the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

L1 Application

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent ('N4 Notice'). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$700.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$23.01. This amount is calculated as follows: \$700.00 x 12, divided by 365 days.
5. The Tenant has paid \$6,200.00 to the Landlord since the application was filed.
6. The rent arrears owing to April 30, 2023 are \$500.00.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

### L2 Application

10. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the Landlord and the Tenant is terminated.
11. On July 12, 2022, the Landlord gave the Tenant an N12 notice of termination ('N12 Notice') with the termination date of September 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
12. Section 48.1 of the Act requires the Landlord to provide compensation to the Tenant in amount equal to one month's rent where an N12 notice is served. The Landlord testified that he provided compensation to the Tenant by waiving the rent owed by the Tenant for the month of September 2023.

### *The Landlord's good faith intention*

13. The Landlord testified that he requires the rental unit for himself and his spouse. He stated he and his spouse currently reside in Hamilton and it is their intention to move into the rental unit to retire.
14. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court held that:

the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...

15. Thus, the Landlord must establish that he genuinely intends to move into the unit. The Court also found in *Salter* that the Landlord's motives are "largely irrelevant".
16. The Landlord provided clear, consistent and uncontested evidence that he intends to move into the rental unit for at least one year and has no intention of renting the unit again.
17. On the basis of the uncontested evidence before the Board, I have no reason to doubt the truthfulness of the Landlord's testimony or their good faith intentions. I am therefore satisfied on the balance of probabilities, that the Landlord, in good faith requires possession of the rental unit for the purpose of residential occupation for a minimum of one year.

*Section 83 considerations for both the L1 and L2 Applications*

18. Pursuant to section 83 of the Act, I am required to consider all of the circumstances in the case including both parties' situations to determine if it would be appropriate to grant relief.
19. The Tenant did not attend the hearing to provide evidence regarding their circumstances. The Landlord testified that he is unaware of any circumstances of the Tenant that would cause me to delay or deny eviction of the Tenant.
20. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
21. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

**It is ordered that:**

**For both the L1 and L2 Applications:**

1. The tenancy between the Landlord and the Tenant is terminated, in a final way, on May 1, 2023.
2. The Tenant shall pay to the Landlord \$709.01 which represents the amount of rent (\$523.01) owing to May 1, 2023, and costs (\$186.00) for the filing of the application with the Board.
3. The Tenant shall also pay the Landlord compensation of \$23.01 per day for the use of the unit starting May 2, 2023 until the date the Tenant moves out of the unit.

4. If the Tenant does not pay the Landlord the full amount owing on or before May 1, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 2, 2023 at 6.00% annually on the balance outstanding.
5. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
6. If the unit is not vacated on or before May 1, 2023, then starting May 2, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after May 2, 2023.

**April 20, 2023**

**Date Issued**

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Susan Priest

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto  
ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on November 2, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.